

Item 1

Proposed Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: via Zoom
July 22, 2022

Present: Member Spencer Walker
Representative of the State Treasurer, Vice Chairperson
Member Lee Adams
County Supervisor
Member Jeannie Lee
Representative of the Director of the Office of Planning and Research
Member Renee Nash
School District Board Member
Member Sarah Olsen
Public Member
Member Shawn Silva
Representative of the State Controller

Absent: Member Gayle Miller, Chairperson
Representative of the Director of the Department of Finance

NOTE: The transcript for this hearing is attached. These minutes are designed to be read in conjunction with the transcript.

CALL TO ORDER AND ROLL CALL

Vice Chairperson Walker called the meeting to order at 10:03 a.m., and welcomed Mr. Shawn Silva, Chief Counsel and Deputy State Controller, representing the State Controller and welcomed back Ms. Jeannie Lee, Chief Counsel, representing the Director of the Governor’s Office of Planning and Research. Executive Director Heather Halsey stated that Chairperson Miller notified staff that she would not be attending the meeting and asked that Vice Chair Mr. Walker serve as Chair, and called the roll. Members Adams, Lee, Nash, Olsen, Silva, and Walker all indicated that they were present with Member Miller absent.

APPROVAL OF MINUTES

Vice Chairperson Walker asked if there were any objections or corrections to the May 27, 2022 minutes and asked if there was any public comment on this item. There was no response. Member Adams made a motion to adopt the minutes. Member Nash seconded the motion. Executive Director Halsey called the roll. The Commission voted to adopt the May 27, 2022 hearing minutes by a vote of 4-0 with Member Miller absent and members Lee and Olsen abstaining.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

Vice Chairperson Walker asked if there was any public comment. There was no response.

HEARINGS AND DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 7 (GOV. CODE, § 17551, 17557, 17559, and 17570) (action)

Executive Director Halsey swore in the parties and witnesses participating in the Article 7 portion of the hearing.

CONSENT CALENDAR

INFORMATIONAL HEARINGS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 8 (action)

ADOPTION OF ORDER TO ADOPT RULEMAKING

- Item 6* Conflict of Interest (Order 22-01), Proposed Amendments to California Code of Regulations, Title 2, Division 2, Chapter 2.5, Article 9

STATEWIDE COST ESTIMATES

- Item 7* *Racial and Identity Profiling*, 18-TC-02
 Government Code Section 12525.5, as added and amended by Statutes 2015, Chapter 466 (AB 953); Statutes 2017, Chapter 328 (AB 1518); California Code of Regulations, Title 11, Sections 999.224, 999.225, 999.226, 999.227, 999.228, and 999.229, as added by Register 2017, No. 46¹

Executive Director Halsey stated that Items 6 and 7 were proposed for consent. Vice Chairperson Walker asked if there were any objections to the Consent Calendar from the members or from members of the public. There was no response.

Member Adams made a motion to adopt the Consent Calendar. Member Olsen seconded the motion. The Commission voted to adopt the Consent Calendar by a vote of 6-0 with Member Miller absent.

APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181.1(c) (info/action)

- Item 2 Appeal of Executive Director Decisions

Executive Director Halsey presented this item, stating that Item 2 is reserved for appeals of Executive Director decisions and that there were no appeals to consider for this hearing.

TEST CLAIMS

- Item 3 Dismissal: *Floodplain Restoration Condition (no. 12) of Water Quality Certification for Turlock Irrigation District and Modesto Irrigation District – Don Pedro Hydroelectric Project and La Grange Hydroelectric Project*, 21-TC-02

¹ Note that Register 2016, 50-2 was incorrectly cited in the test claim filing. The correct register is Register 2017, No. 46.

Water Quality Certification for Federal Permit or License, Turlock Irrigation District and Modesto Irrigation District Don Pedro Hydroelectric Project and La Grange Hydroelectric Project, Federal Energy Regulatory Commission Project Nos. 2299 and 14581, Condition 12, Riparian, Spawning, and Floodplain Management, Adopted by the State Water Resources Control Board on January 15, 2021

Turlock Irrigation District and Modesto Irrigation District, Claimants

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission adopt the Proposed Decision to dismiss this Test Claim.

Peter Prows and Tony Francois appeared on behalf of the Turlock Irrigation District and the Modesto Irrigation District, and Jesse Kirschner appeared as a witness on behalf of the Turlock Irrigation District.

Vice Chairperson Walker asked if there was any public comment or questions from Members. There was no response. Without further discussion, Vice Chairperson Walker made a motion to adopt the staff recommendation. With a second by Member Nash, the Commission voted to adopt the staff recommendation by a vote of 6-0 with Member Miller absent.

INCORRECT REDUCTION CLAIMS

Item 4 *Municipal Stormwater and Urban Runoff Discharges, 20-0304-I-07*

Los Angeles Regional Water Quality Control Board Order No. 01-182;
Permit CAS004001, Part 4F5c3

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007,
2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013

City of Lakewood, Claimant

Executive Director Halsey reported that the claimant representative contacted staff and thanked Commission staff for their work on this matter and stated that they were resting on their written comments. Senior Commission Counsel Elizabeth McGinnis presented this item and recommended that the Commission adopt the Proposed Decision to partially approve this Incorrect Reduction Claim.

Lisa Kurokawa appeared on behalf of the State Controller's Office and stated that the Controller agreed with the Proposed Decision and would work with the claimant to reinstate the costs deemed to be eligible for the twice weekly pick-ups. Vice Chairperson Walker asked if there was any public comment or questions from the Members. Without further discussion, Member Olsen made a motion to adopt the staff recommendation. With a second by Member Adams, the Commission voted to adopt the staff recommendation by a vote of 6-0 with Member Miller absent.

HEARINGS ON COUNTY APPLICATIONS FOR FINDINGS OF SIGNIFICANT FINANCIAL DISTRESS PURSUANT TO WELFARE AND INSTITUTIONS CODE SECTION 17000.6 AND CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 2 (info/action)

- Item 5 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer

Executive Director Halsey stated that Item 5 is reserved for county applications for a finding of significant financial distress, or SB 1033 applications, and that no SB 1033 applications have been filed.

REPORTS

- Item 8 Legislative Update (info)

Program Analyst Jill Magee presented this item.

- Item 9 Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Camille Shelton presented this item.

- Item 10 Executive Director: Budget, Workload Update, and Tentative Agenda Items for the September 2022 and December 2022 Meetings (info)

Executive Director Halsey presented this item.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 AND 11126.2 (info/action)

The Commission adjourned into closed executive session at 10:55 a.m., pursuant to Government Code section 11126(e). The Commission met in closed session to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; to confer with and receive advice from legal counsel regarding potential litigation; and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126(e):

Trial Courts:

None

Courts of Appeal:

1. ***On Remand from the Third District Court of Appeal, Case No. C070357***
State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego, et al. (petition and cross-petition)
Third District Court of Appeal, Case No. C092139
Sacramento County Superior Court Case No. 34-2010-80000604
[Discharge of Stormwater Runoff, Order No. R9-207-000 (07-TC-09), California

Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g, F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L]

2. *City of San Diego v. Commission on State Mandates, State Water Resources Control Board, Department of Finance*

Third District Court of Appeal, Case No. C092800

Sacramento County Superior Court, Case No. 2019-80003169

(*Lead Sampling in Schools: Public Water System No. 3710020 (17-TC-03)*)

3. *County of San Diego v. Commission on State Mandates, Department of Finance, State Controller*

Fourth District Court of Appeal, Case No. D079742

San Diego County Superior Court, Case No. 37-2020-00009631-CU-WM-CTL

(*Youth Offender Parole Hearings (17-TC-29)*)

California Supreme Court:

1. *Coast Community College District, et al. v. Commission on State Mandates,*

California Supreme Court, Case No. S262663

(Petition for Review Filed June 10, 2010)

Third District Court of Appeal, Case No. C080349

Sacramento County Superior Court, Case No. 34-2014-80001842

[*Minimum Conditions for State Aid, 02-TC-25/02-TC-31*

(Education Code Sections 66721, 66721.5, 66722, 66722.5, 66731, 66732, 66736, 66737, 66738, 66740, 66741, 66742, 66743, 70901, 70901.5, 70902, 71027, 78015, 78016, 78211.5, 78212, 78213, 78214, 78215, 78216, 87482.6, and 87482.7; Statutes 1975, Chapter 802; Statutes 1976, Chapters 275, 783, 1010, and 1176; Statutes 1977, Chapters 36 and 967; Statutes 1979, Chapters 797 and 977; Statutes 1980, Chapter 910; Statutes 1981, Chapters 470 and 891; Statutes 1982, Chapters 1117 and 1329; Statutes 1983, Chapters 143 and 537; Statutes 1984, Chapter 1371; Statutes 1986, Chapter 1467; Statutes 1988, Chapters 973 and 1514; Statutes 1990, Chapters 1372 and 1667; Statutes 1991, Chapters 1038, 1188, and 1198; Statutes 1995, Chapters 493 and 758; Statutes 1998, Chapter 365, 914, and 1023; Statutes 1999, Chapter 587; Statutes 2000, Chapter 187; and Statutes 2002, Chapter 1169; California Code of Regulations, Title 5, Sections 51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022, 51023, 51023.5, 51023.7, 51024, 51025, 51027, 51100, 51102, 53200, 53202, 53203, 53204, 53207, 53300, 53301, 53302, 53308, 53309, 53310, 53311, 53312, 53314, 54626, 54805, 55000, 55000.5, 55001, 55002, 55002.5, 55004, 55005, 55006, 55100, 55130, 55150, 55160, 55170, 55182, 55200, 55201, 55202, 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, 55350, 55401, 55402, 55403, 55404, 55500, 55502, 55510, 55512, 55514, 55516, 55518, 55520, 55521, 55522, 55523, 55524, 55525, 55526, 55530, 55532, 55534, 55600, 55601, 55602, 55602.5, 55603, 55605, 55607, 55620, 55630, 55750, 55751, 55752, 55753, 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55758.5, 55759, 55760, 55761, 55762, 55763, 55764, 55765, 55800, 55800.5, 55801, 55805, 55805.5, 55806, 55807, 55808, 55809, 55825, 55827, 55828, 55829, 55830, 55831, 58102, 58104, 58106, 58107, 58108, 59404, and 59410; Handbook of Accreditation and Policy Manual, Accrediting Commission for Community and Junior Colleges (Summer 2002); and “Program and

B. POTENTIAL LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126(e):

Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members or staff.

C. PERSONNEL

To confer on personnel matters pursuant to Government Code section 11126(a)(1).

RECONVENE IN PUBLIC SESSION

At 11:09 a.m., the Commission reconvened in open session.

REPORT FROM CLOSED EXECUTIVE SESSION

Vice Chairperson Walker reported that the Commission met in closed executive session pursuant to Government Code section 11126(e). The Commission conferred with and received advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and conferred with and received advice from legal counsel regarding potential litigation, and, pursuant to Government Code section 11126(a)(1) to confer on personnel matters.

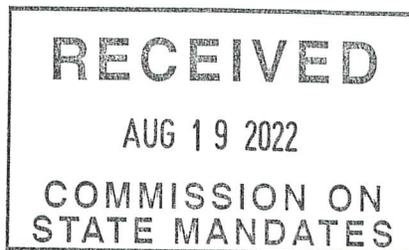
ADJOURNMENT

Hearing no further business, Vice Chairperson Walker stated that he would entertain a motion to adjourn the meeting. Member Nash made a motion to adjourn the meeting. Member Olsen seconded the motion. The Commission adopted the motion to adjourn the July 22, 2022 meeting by a vote of 5-0 at 11:11 a.m. with members Miller and Silva absent.

Heather Halsey
Executive Director

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES

PUBLIC MEETING



FRIDAY, JULY 22, 2022

10:03 A.M.

MEETING HELD

VIA ZOOM

A VIDEO COMMUNICATIONS PLATFORM

REPORTER'S TRANSCRIPT OF PROCEEDINGS

ORIGINAL

REPORTED BY:

KATHRYN S. SWANK

Certified Shorthand Reporter No. 13061

Registered Professional Reporter

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A P P E A R A N C E S

COMMISSIONERS PRESENT

SPENCER WALKER
Representative for FIONA MA
State Treasurer
(Vice Chairperson of the Commission)

LEE ADAMS III
Sierra County Supervisor
Local Agency Member

JEANNIE LEE
Representative for SAMUEL ASSEFA, Director
Office of Planning & Research

RENEE C. NASH
Eureka Union School District
School District Board Member

SARAH OLSEN
Public Member

SHAWN SILVA
Representative for BETTY T. YEE
State Controller

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COMMISSION STAFF

ERIC FELLER
Senior Commission Counsel

HEATHER A. HALSEY
Executive Director

JILL MAGEE
Program Analyst
ELIZABETH MCGINNIS
Senior Commission Counsel

HEIDI PALCHIK
Assistant Executive Director

CAMILLE N. SHELTON
Chief Legal Counsel

1 A P P E A R A N C E S C O N T I N U E D

2
3 ***PUBLIC PARTICIPANTS***

4 TONY FRANCOIS
5 Turlock Irrigation District
6 and
7 Modesto Irrigation District

8 JESSE KIRSCHNER
9 Turlock Irrigation District

10 LISA KUROKAWA
11 State Controller's Office

12 PETER PROWS
13 Turlock Irrigation District
14 and
15 Modesto Irrigation District

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B. Test Claims

Item 3 Water Quality Certification for
(Con't) Federal Permit or License,
Turlock Irrigation District and
Modesto Irrigation District
Don Pedro Hydroelectric
Project and La Grange
Hydroelectric Project, Federal
Energy Regulatory Commission
Project Nos. 2299 and 14581,
Condition 12, Riparian,
Spawning, and Floodplain
Management, Adopted by the State
Water Resources Control Board on
January 15, 2021

Turlock Irrigation District and
Modesto Irrigation District,
Claimants

C. Incorrect Reduction Claims

Item 4 Municipal Stormwater and Urban 41
Runoff Discharges, 19-0304-I-07

Los Angeles Regional Water Quality
Control Board Order No. 01-182;
Permit CAS004001, Part 4F5c3

Fiscal Years: 2002-2003, 2003-2004,
2004-2005, 2005-2006, 2006-2007,
2007-2008, 2008-2009, 2009-2010,
2010-2011, 2011-2012, 2021-2013

City of Lakewood, Claimant

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Government Code Section 12525.5, as added and amended by Statutes 2015, Chapter 466 (AB 953); Statutes 2017, Chapter 328 (AB 1518); California Code of Regulations, Title 11, Sections 999.224, 999.225, 999.226, 999.227, 999.228, and 999.229, as added by Register 2017, No. 46	

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1 FRIDAY, JULY 22, 2022, 10:03 A.M.

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3 VICE CHAIRPERSON WALKER: Thank you. The meeting
4 of the Commission on State Mandates will come to order.
5 Welcome to the webinar.

6 Statute 2022, Chapter 48, signed by Governor Newsom
7 on June 30, 2022, amended the Bagley-Keene Open Meeting
8 Act to extend until July 1, 2023, the authority to hold
9 public meetings through teleconferencing and to make
10 public meetings accessible electronically to all members
11 of the public seeking to observe and to address the
12 state body, in order to protect the health and safety of
13 civil servants and the public.

14 The Commission continues to be committed to
15 ensuring that all -- that our public meetings are
16 accessible to the public and that the public has the
17 opportunity to observe the meeting and to participate by
18 providing written and verbal comment on Commission
19 matters.

20 Please note that the materials for today's meeting,
21 including the notice, agenda, and witness list, are all
22 available on the Commission's website at www.csm.ca.gov
23 under the "Hearings" tab.

24 Also please note that in the event we experience
25 technical difficulties or the meeting is bumped offline,

1 we will we start and allow time for people to rejoin
2 before recommencing the meeting. Please join me in
3 welcoming a new Commission member representing the State
4 Controller, Mr. Shawn Silva, Chief Counsel and Deputy
5 State Controller.

6 Mr. Silva has worked for the State Controller's
7 Office as an attorney for over 20 years and served as
8 Commission Counsel for a brief period in 1997 through
9 1998, where, notably, he represented the Commission in
10 the City of Richmond v. Commission on State Mandates
11 case. Mr. Silva is replacing Member Yvette Stowers, who
12 is now the Executive Director for the Board of
13 Equalization.

14 Welcome to the Commission, Member Silva.

15 In addition, please join me in welcoming back to
16 the Commission Ms. Jeanie Lee, Chief Counsel,
17 representing the Director of the Governor's Office of
18 Planning and Research. Ms. Lee has returned from her
19 assignment serving on a detail to the White House
20 Council on Environmental Quality in Washington, D.C.

21 Heather, will you please call the roll.

22 MS. HALSEY: Sure.

23 Chairperson Miller notified the staff that she will
24 not be attending today's meeting and asked that Vice
25 Chair Mr. Walker serve as Chair.

1 Mr. Adams.

2 MEMBER ADAMS: Here.

3 MS. HALSEY: Ms. Lee.

4 MEMBER LEE: Here.

5 MS. HALSEY: Ms. Nash.

6 MEMBER NASH: Here.

7 MS. HALSEY: Ms. Olsen.

8 MEMBER OLSEN: Here.

9 MS. HALSEY: Mr. Silva.

10 MEMBER SILVA: Here.

11 MS. HALSEY: Mr. Walker.

12 VICE CHAIRPERSON WALKER: Here.

13 Next is Item 1.

14 Are there any objections to or corrections of the
15 May 27th, 2022, minutes?

16 (No response.)

17 VICE CHAIRPERSON WALKER: Is there any public
18 comment on this item?

19 MEMBER ADAMS: Mr. Chairman, I would move approval
20 of the minutes as submitted.

21 VICE CHAIRPERSON WALKER: Thank you, Mr. Adams.

22 Is there a second?

23 MEMBER NASH: Second.

24 VICE CHAIRPERSON WALKER: Thank you, Ms. Nash.

25 There has been a motion to adopt the May 27, 2022,

1 minutes by Member Adams; and seconded by Member Nash.

2 Are you ready for the question, or is there further
3 discussion?

4 (No response.)

5 VICE CHAIRPERSON WALKER: Heather, please call the
6 roll.

7 MS. HALSEY: Mr. Adams.

8 MEMBER ADAMS: Aye.

9 MS. HALSEY: Ms. Lee.

10 MEMBER LEE: Since I wasn't here at the last
11 meeting, I'm going to abstain.

12 MS. HALSEY: Ms. Nash.

13 MEMBER NASH: Aye.

14 MS. HALSEY: Ms. Olsen.

15 MEMBER OLSEN: I too would like to abstain. I will
16 vote for it if you need my vote to carry it.

17 VICE CHAIRPERSON WALKER: Mr. Silva.

18 MEMBER SILVA: I think I present the same problem
19 since I wasn't here last week. I can approve it. I
20 looked at it. I think we're getting tight on the count.

21 MS. HALSEY: Yes. We do need four. If you were
22 briefed by your predecessor and the Controller, then you
23 also could vote to approve.

24 MEMBER SILVA: I will vote aye.

25 MS. HALSEY: Mr. Walker.

1 VICE CHAIRPERSON WALKER: Aye.

2 MS. HALSEY: Thank you.

3 Now we will take up public comment for matters not
4 on the agenda today.

5 Please note that the Commission may not take action
6 on items not on the agenda. However, it may schedule
7 issues raised by the public for consideration at future
8 meetings.

9 We invite the public to comment on matters that are
10 on the agenda as they are taken up.

11 VICE CHAIRPERSON WALKER: Is there any public
12 comment?

13 (No response.)

14 VICE CHAIRPERSON WALKER: Hearing no further public
15 comment, we will move to the next item.

16 MS. HALSEY: Let's move to the swearing in.

17 Will the parties and witnesses for Items 3 and 4
18 please turn on your video and unmute your microphones
19 and please rise for the swearing in. I'm sorry. And
20 please identify yourselves for the record.

21 MR. KIRSCHNER: Jesse Kirschner.

22 MS. HALSEY: If you want to go ahead. Go ahead,
23 Jesse Kirschner. We didn't hear you.

24 MR. KIRSCHNER: Jesse Kirschner, Turlock Irrigation
25 District.

1 MR. PROWS: Peter Prows, the claimants'
2 representative.

3 MR. FRANCOIS: And Tony Francois, also for the
4 claimants on Item 3.

5 MS. HALSEY: Thank you.

6 MS. KUROKAWA: And Lisa Kurokawa, State
7 Controller's Office.

8 MS. HALSEY: Thank you.

9 (Parties/witnesses stood to be sworn or
10 affirmed.)

11 MS. HALSEY: Do you solemnly swear or affirm that
12 the testimony which you are about to give is true and
13 correct, based on your personal knowledge, information,
14 or belief?

15 (Affirmative responses.)

16 MS. HALSEY: Thank you.

17 Please be seated and turn off your video and mute
18 your microphone.

19 Next is the proposed consent calendar. Items 6 and
20 7 are proposed for consent.

21 VICE CHAIRPERSON WALKER: Are there any objections
22 to the proposed consent calendar from the members -- or
23 from members of the public?

24 (No response.)

25 MEMBER ADAMS: I would move approval. I would move

1 approval of the consent calendar, Mr. Chairman.

2 MEMBER OLSEN: I will second that.

3 VICE CHAIRPERSON WALKER: Thank you, Mr. Adams and
4 Ms. Olsen.

5 The motion to adopt the proposed consent calendar
6 has been moved by Member Adams and seconded by Member
7 Olsen.

8 Are you ready for the question or is there further
9 discussion?

10 (No response.)

11 VICE CHAIRPERSON WALKER: Heather, please call the
12 roll.

13 MS. HALSEY: Mr. Adams.

14 MEMBER ADAMS: Aye.

15 MS. HALSEY: Ms. Lee.

16 MEMBER LEE: Aye.

17 MS. HALSEY: Ms. Nash.

18 MEMBER NASH: Aye.

19 MS. HALSEY: Ms. Olsen.

20 MEMBER OLSEN: Aye.

21 MS. HALSEY: Mr. Silva.

22 MEMBER SILVA: Aye.

23 MS. HALSEY: Mr. Walker.

24 VICE CHAIRPERSON WALKER: Aye.

25 Motion carried.

1 MS. HALSEY: Item 2 is reserved for appeals of
2 Executive Director decisions. There are no appeals to
3 consider for this hearing.

4 Next is Item 3. Senior Commission Counsel Eric
5 Feller will please turn on his video and unmute his
6 microphone and present a proposed decision to dismiss
7 the test claim on Floodplain Restoration Condition
8 Number 12 of the Water Quality Certification for Turlock
9 Irrigation District and Modesto Irrigation District -
10 Don Pedro Hydroelectric Project and La Grange
11 Hydroelectric Project.

12 At this time, we invite the parties and witnesses
13 for Item 3 to please turn on their video and unmute
14 their microphones.

15 MR. FELLER: All right. Good morning.

16 Turlock and Modesto Irrigation Districts filed this
17 test claim to seek reimbursement for conditions imposed
18 by the State Water Board for water quality
19 certification, under section 401 of the Federal Clean
20 Water Act, to continue to operate and maintain the
21 hydroelectric projects.

22 Staff recommends the Commission dismiss this test
23 claim and not reach the merits because the claimants are
24 not subject to the tax and spending limitations of
25 Articles XIII A and XIII B of the California

1 Constitution and so are ineligible to claim mandate
2 reimbursement.

3 Although Turlock Irrigation District claims its
4 levies ad valorem property taxes, the law does not
5 authorize it. Instead, the districts have statutory --
6 statutory authority to impose fees, sell bonds, and levy
7 property assessments collected by the County on the
8 property tax bill.

9 Statutes and case law going back more than a
10 century distinguish between taxes that irrigation
11 districts do not collect and assessments that they do.

12 Modesto's Irrigation District states on its website
13 that it does not impose taxes. And there is no evidence
14 that the Turlock or Modesto districts have ever adopted
15 an appropriations limit, as required by the Government
16 Code.

17 The claimants want the Commission to reach the
18 merits and determine whether they have fee authority
19 sufficient to cover the cost of the alleged mandate.
20 They argue that under Propositions 218 and 26, they have
21 no fee authority since any fees they impose would be
22 considered taxes. But so long as the districts lack
23 statutory authority to impose "proceeds of taxes" that
24 are not subject to the appropriations limit of
25 Article XIII B, the Commission lacks authority to hear

1 and determine this test claim on its merits.

2 Thus, staff recommends that the Commission adopt
3 the proposed decision to dismiss the test claim and
4 authorize staff to make any technical, nonsubstantive
5 changes to the proposed decision following the hearing.

6 VICE CHAIRPERSON WALKER: Thank you, Mr. Feller.

7 Parties and witnesses, please state your names for
8 the record. Mr. Prows.

9 MR. PROWS: Thank you.

10 Peter Prows, the claimants' representative.

11 MR. FRANCOIS: And Tony Francois, also claimants'
12 representative.

13 And we're joined today by Jesse Kirschner, who
14 we'll present as a witness during our presentation.

15 VICE CHAIRPERSON WALKER: Thank you.

16 Each of you are for Turlock Irrigation District and
17 Modesto Irrigation District.

18 Would you like to begin.

19 MR. PROWS: Yes. And just to be clear,
20 Mr. Kirschner, he is the Accounting and Finance
21 Department Manager for Turlock Irrigation District, not
22 Modesto Irrigation District.

23 But both Mr. Francois and myself are representing
24 both of the irrigation districts.

25 VICE CHAIRPERSON WALKER: Thank you for that

1 clarification.

2 MR. PROWS: Can you all hear me okay?

3 VICE CHAIRPERSON WALKER: Yes.

4 MR. PROWS: Okay. Good. Thank you.

5 We'll proceed today as expeditiously as we can. I
6 will give some opening remarks. Mr. Francois will
7 address legal points about whether Turlock Irrigation
8 District receives -- receives property taxes. He will
9 also conduct a direct examination of Mr. Kirschner. And
10 I will close with some brief remarks.

11 The issue presented in the proposed decision is
12 whether the districts would have to fund the mandate at
13 issue in the test claim here from proceeds of taxes.

14 This proceeding is essentially at a motion to
15 dismiss stage. We were assured, over the course of the
16 briefing of this, that this was a pure legal question,
17 and, yet, the proposed decision is loaded up with
18 efforts to make a factual showing with website quotes
19 and interpretations of budget documents that were not
20 part of the test claim, and with efforts to refute the
21 factual showing that we have offered.

22 This proposed dismissal stage is not the time to be
23 weighing the evidence. The fact that you got
24 conflicting evidence before you should tell the
25 Commission that this claim is really not appropriate for

1 dismissal before you get to the merits.

2 But even on its own terms, the proposed decision
3 fundamentally misses the mark, because it essentially
4 ignores the relevant law, which is Propositions 218 and
5 26.

6 So the proposed decision may have made sense 25
7 years ago, before Propositions 218 and 26, but it
8 doesn't make any sense now.

9 Before Propositions 218 and 26, local agencies
10 could evade the constitutional limits on taxation simply
11 by calling the revenues something else: Fees,
12 assessments, or charges. But Propositions 218 and 26
13 changed all that.

14 After Propositions 218 and 26, Article XIII C,
15 section 1(e), of the California Constitution sets up a
16 presumption that any means of raising revenue, whether
17 it's called a fee, a charge, or a levy, or anything
18 else, is a tax. Quote: "As used in this article, 'tax'
19 means any levy, charge, or exaction of any kind imposed
20 by a local government, except the following."

21 And I will get into the exceptions in a moment.

22 Doesn't matter what it's called. The staff
23 acknowledged that the districts have authority -- had
24 fee authority. They say, on page 2 of the proposed
25 decision, the claimants only had the authority to levy

1 an assessment on the property and other fees and
2 charges. And their view is that since we have fee and
3 charge authority, we don't have tax authority.
4 Elsewhere, they acknowledged that we actually do have
5 authority to levy special taxes. And that's Water Code
6 section 22078.5. And this is all a word game;
7 assessments and other fees and charges are all
8 presumptively taxes.

9 We meet our burden, in the test claim, to show that
10 the mandate at issue would be funded by proceeds of
11 taxes, simply by showing that the mandate would cost
12 money, because any means of raising revenue to pay for
13 the mandate would presumptively be a tax under our
14 Article XIII C, section 1(b). And we meet that burden
15 at page 162 of the record, where we put in a cost
16 estimate for the cost of the mandate. As of a few years
17 ago, it was \$51 million.

18 The Commission has the burden of proving otherwise,
19 and that the districts could fund this \$51 million
20 through something other than a charge or a fee that
21 Propositions 218 and 26 deems to be a tax. That's
22 Government Code section 17556(d) and the recent
23 Department of Finance versus Commission on State
24 Mandates case 58 Cal.App.5th at page 561.

25 The Commission can only meet that burden if it

1 shows -- and this is -- I'm going to quote
2 Article XIII C, section 1(e), that the money raised to
3 fund the mandate is for a, quote, "specific benefit
4 conferred or privilege granted directly to the payor
5 that is not provided to those charged."

6 That's paragraph (1).

7 Paragraph (2): If it's "a charge imposed for a
8 specific government service or product provided directly
9 to the payor that is not provided to those not charged."

10 In paragraph (7): "If it's an assessment and
11 property-related fee "imposed in accordance with the
12 provisions of Article XIII D."

13 On Article XIII D, the recent Department of Finance
14 case that I cited earlier, recognized that Article XIII
15 D, section 6(b), paragraphs (3) through (5) imposes
16 similar limits on its authority as Article XIII C,
17 section 1(e), imposes on the authority to levy and other
18 charges.

19 Assessments must fund a, quote, "service that is
20 actually used by or immediately available to the owner
21 of the property in question." And it can't be for,
22 quote, "general governmental services where the service
23 is available to the public at large, in substantially
24 the same manner as it is to property owners."

25 The Commission, I should note, applied those

1 exceptions in the municipal stormwater and urban runoff,
2 discharges test claims, a 03-TC-04, 03-TC-19, 03-TC-20
3 03-TC-21. And we cited that in our response to the
4 proposed dismissal. So there's nothing novel about what
5 I'm saying here or what the Commission has done in this
6 regard before.

7 But the Commission can't meet the burden to
8 establish that the money the districts would have to
9 raise to fund the mandate here would not be a tax.
10 Again, this really is a merits question. It is not
11 something that ought to be resolved at the motion to
12 dismiss stage.

13 We have shown enough to establish, as I mentioned
14 before, that money would have to be raised to pay for
15 the mandate. It costs \$51 million.

16 We have also established, at least a prima facie
17 showing, that any fee, assessment, or charge imposed to
18 fund the mandate would have to be a tax under the facts
19 of the mandate here.

20 The mandate is for a floodplain, quote, restoration
21 project in the downstream Delta and in riparian areas
22 along the Tuolumne River that are outside the district's
23 boundaries. Pages 72 to 73 of the record.

24 These are -- these benefits of this restoration
25 project are not for the benefit of the district's

1 customers. They are for the benefit of areas outside
2 the districts. Not to mitigate any impacts of the
3 projects going forward, but to remediate past perceived
4 impacts of the project. It's a restoration project.

5 The districts can charge, as the Commission
6 proposed decision states, assessments, fees, and other
7 charges to pay for this. But those assessments, fees,
8 or charges would presumptively all be taxes under
9 Proposition 218 and 26.

10 Because those -- the benefits of this project are
11 not intended to benefit the people who would be paying
12 for them. This is pragmatically a tax and not a fee or
13 charge under Propositions 218 and 26.

14 The test claim should not be dismissed. If it is,
15 just a fair warning that I will be recommending to the
16 claimants that they pursue a writ and seek their
17 attorney fees from the Commission under CCP 1021.5.

18 With that, I will turn it over to Mr. Francois.

19 MR. FRANCOIS: Thank you for your time this
20 morning, members of the Commission, and I will be fairly
21 brief.

22 The essence of the argument in the proposed
23 dismissal order on the claimants' eligibility boils down
24 to this.

25 The proposed order concedes two really important

1 points: First, that both districts do have special
2 taxes authority; and it also concedes that that special
3 taxing authority, that the proceeds of those special
4 taxes are subject to the Gann limit, and, therefore,
5 eligible for reimbursement. And in many ways, this just
6 boils down to those two points.

7 So the proposed decision makes two arguments for
8 why the Commission should ignore the fact that the
9 claimants have special tax authority and that they would
10 be entitled to reimbursement or eligible for
11 reimbursement of new expenditures under that special tax
12 authority.

13 First, the proposed decision argues that it's
14 necessary for eligibility to have the property tax
15 authority; secondly, the proposed decision sort of
16 argues -- it's not very clear that that is really the
17 point -- that a claimant has to have previously
18 exercised a special tax authority to be eligible for
19 reimbursement of a claim that would require those
20 claimants to exercise their special tax authority for
21 the first time.

22 So at page 36 of the proposed decision, the
23 proposed decision argues that -- or concedes that the
24 districts have special tax authority and that the
25 proceeds of those special taxes would be subject to the

1 appropriations limit.

2 There's a list of cases cited generally, in
3 Footnotes 32 through 34 of the proposed decision, that
4 are argued in the proposed decision to support the
5 proposition that property tax authority is necessary for
6 eligibility. And that's in -- both in the chart at the
7 beginning of the proposed decision, at pages 2 and 4, in
8 the column, "Staff Recommendation"; and then in the
9 "Summary of Findings" of the page 9; and, again, in
10 those Footnotes 32 to 34.

11 But, importantly, none of those cases say that only
12 the property tax expenditures are eligible for
13 subvention under XIII B, section 6.

14 In fact, Article XIII B, subsection 8(c), defines
15 "proceeds of taxes" to include, without limitation, all
16 tax revenues and all fee revenue that exceeds the
17 constitutional and legal limits on fee revenue.

18 So if Article XIII B were -- you know, if
19 reimbursement for tax expenditures -- expenditure of
20 taxes under Article XIII B were limited to property
21 taxes, you would expect to find that limitation there in
22 XIII B, 8(c), which defines "proceeds of taxes." The
23 text says the opposite: That proceeds of taxes includes
24 all tax revenues. And none of the cases cited by the
25 Commission proposed decision limits that provision to

1 simply property tax.

2 And, in fact, the entire thrust of Prop 13, Prop
3 218, and Prop 26 have been to more comprehensively
4 define "local government revenue" of all kinds as taxes,
5 to make that tax revenue harder to raise and harder to
6 spend, and to increasingly narrow the types of revenue
7 that are not considered taxes.

8 So there's no basis to conclude that the subvention
9 right of local governments in Article XIII B, 6, is
10 limited to the expenditure of property tax.

11 Now, there's also an argument made that claimants
12 are not eligible for subvention under XIII B, 6, unless
13 they are solely supported by proceeds of taxes. And
14 that appears on page 22 and on page 26 of the proposed
15 decision.

16 There are no authorities for that either. None of
17 the cases cited actually stand for the proposition that
18 a -- that a claimant must be solely supported by
19 proceeds of taxes. And, you know, that would be
20 untenable, as a general rule, because almost no local
21 government is solely supported by proceeds of taxes.
22 Cities, counties, fire districts, even some school
23 districts, all have variations on user fees. Cities and
24 counties impose development fees. There are nontax
25 revenues of all kinds in the revenues of just about

1 every local government in California.

2 And so adopting this rule that you are only
3 eligible for subvention, if you are solely supported by
4 proceeds of taxes, would immediately render probably
5 every city and county in the state ineligible for
6 subventions. And we think that's not the intent of the
7 constitutional provision, and it's a very poor reading
8 of the case law as well.

9 There's also no authority for the proposition that
10 a local government has to have exercised its taxing
11 authority before it files a test claim in order to be
12 eligible. None of the cases support this proposition.

13 Instead, the issue is whether a new expenditure
14 forced by a mandate would be paid for from proceeds of
15 taxes, and that stands to reason because reimbursement
16 is only for new expenditures, and every local government
17 has a mix of tax and nontax authority and revenue. So
18 the prior exercise of a claimant's taxing power cannot
19 be a condition of eligibility. Rather, the existence of
20 taxing power makes the claimant eligible to seek
21 reimbursement if the mandate would require the
22 expenditure and proceeds of taxes. And the Commission
23 should proceed to the merits of that claim -- of that
24 point in this test claim.

25 I will also note that the correct way to deal with

1 eligibility at this preliminary stage is to do what the
2 court of appeal did with this question in the City of
3 El Monte versus Commission on State Mandates case, which
4 is cited in the proposed decision, and I will say in
5 Footnote 34.

6 In that case, in determining whether or not the
7 claimant was eligible, the court simply looked at what
8 type of entity the claimant was. The question there was
9 a school district. Then looked at the list of eligible
10 entities in Article XIII B, subdivision 8(d), which
11 includes school districts. And that answered the
12 eligibility question; it's not more complex than that.
13 Special districts are also listed in section 8(d), and
14 it's conceded that both claimants are special districts.

15 So that's how the Commission should look at
16 eligibility as a threshold question. So the dismissal
17 should be rejected on that ground and the merits
18 adjudicated.

19 Mr. Prows will address the issue that the mandate
20 for which the claimants are litigating this test claim
21 can only be paid for from the proceeds of taxes.

22 But before turning back over to him to conclude
23 with that, I want to put on Mr. Kirschner as a witness
24 for the Turlock Irrigation District on the factual
25 question raised by the proposed decision on whether

1 Turlock Irrigation District receives property taxes.

2 I will note, as basically a showing of proof before
3 presenting Mr. Kirschner, that, actually, all of the
4 evidence in your record is that the funds received by
5 Turlock Irrigation District from Stanislaus and Merced
6 Counties are property taxes. There's no evidence in the
7 record to conclude otherwise. The speculations in the
8 proposed decision that propose alternative
9 characterizations of that revenue all actually fail for
10 want of evidence to support them.

11 So at this point, I would like to call
12 Mr. Kirschner and ask him a few questions.

13 ---o0o---

14 EXAMINATION

15 BY MR. FRANCOIS:

16 Q Mr. Kirschner, can you hear me?

17 A Yes.

18 Q Thank you.

19 Can you state and spell your first for the
20 record, please.

21 A It's Jesse, J-E-S-S-E.

22 Q And your middle name and last name.

23 A Ian. Then Kirschner, K-I-R-S-C-H-N-E-R.

24 Q What are your current title -- what is your
25 current title, sir?

1 A I am the Accounting and Finance Department
2 Manager at Turlock Irrigation District.

3 Q Okay. Thank you.

4 How long have you held that position?

5 A Approximately two and a half years. A little
6 over.

7 Q Okay. What are your general duties in that
8 position?

9 A I overlook pretty much all the district's
10 accounting and finance needs, day-to-day operations, and
11 any kind of bonds that we do. That type of stuff.

12 Q Thank you.

13 Do you supervise all of the district's
14 accounting and finance staff?

15 A I do.

16 Q Thank you.

17 How long have you been with the district,
18 including this position and your prior positions?

19 A Just shy -- it will be 15 years in September.

20 Q Okay. Thank you.

21 Can you please tell me what your undergraduate
22 education is?

23 A I graduated from Chico State in 1999 with
24 degrees in accounting and management information
25 systems.

1 Q And are you a CPA licensee?

2 A I am.

3 Q What year did you pass the CPA exam?

4 A I got my license in 2005.

5 Q Okay. And what continuing education
6 requirements do you can comply with for your CPA
7 license?

8 A We have to comply with -- we have to get 80
9 hours of CPE every two years.

10 Q Thank you.

11 Before going to work at the Turlock Irrigation
12 District, what was your professional experience after
13 you graduated from college?

14 A I worked at PricewaterhouseCoopers for about
15 seven years. And then I worked for a real estate
16 developer for about ten months. And then I have been at
17 the district ever since.

18 Q Thank you.

19 So in your capacity as the Finance and
20 Accounting Department Manager, are you familiar with the
21 districts -- with Turlock Irrigation District's sources
22 of revenue?

23 A Yes.

24 Q Does the district collect its revenues for
25 water and electric service directly from its customers?

1 A Yes.

2 Q Does the district collect any of its water or
3 electric service charges through either Stanislaus or
4 Merced County?

5 A Can you repeat the question? I'm sorry.

6 Q Sure. Let me rephrase that.

7 Do Stanislaus or Merced Counties collect any of
8 your water or electric revenue for you?

9 A No. No.

10 Q Okay. Are there other sources of revenue
11 besides those water and electric charges?

12 A Yes.

13 Q Okay. Is one of those property tax
14 disbursements from Stanislaus and Merced Counties?

15 A Yes.

16 MR. FRANCOIS: Okay. I'm going to ask, is it
17 possible to do a screen share or can we just refer to
18 documents that we have submitted? We just got a couple
19 of pages.

20 MS. HALSEY: No. The Commission will share the
21 document for you. We don't allow people outside of the
22 Commission to share things on the screen at Commission
23 meetings. That's why we asked for you to submit it
24 before. But you did submit it before, so we can ask our
25 IT person to do that right now.

1 MR. FRANCOIS: Let me give it a moment here.

2 All right.

3 MS. HALSEY: You are asking for the late filing
4 that you filed last night?

5 MR. FRANCOIS: No. I apologize. We're trying to
6 figure out our tech here on this end. But we have got
7 it sorted.

8 Q So Mr. Kirschner, the first item I will ask
9 you, or first document, if you have it with you, is the
10 declaration you signed on April 15th.

11 Do you have with you?

12 A I do.

13 Q Okay. Sorry for the delay.

14 So for the Commission members, this is
15 Exhibit 2 to the claimant's April 18th comment letter.
16 It's also page 275 in the PDF compilation of the
17 Commission's exhibits.

18 So Mr. Kirschner, is this a declaration that
19 you signed in support of this claim?

20 A Yes.

21 Q And could you summarize the amounts of revenue
22 received from Stanislaus and Merced County as property
23 tax, as reflected in the declaration, please.

24 A Would you like me to read through all the
25 years?

1 Q If you want to just give what the most current
2 year -- current complete year's revenue is?

3 A Okay. So for 2021, we received 2 --
4 approximately \$2.2 million from the Stanislaus County;
5 and then approximately \$51,000 from Merced County for
6 calendar year 2021.

7 Q Okay. And then is your declaration to those
8 numbers here based on your review of the district's
9 records?

10 A Yes.

11 Q And to the best of your ability, as the
12 department manager, these are accurate?

13 A Yes.

14 Q Very good.

15 Next I want to turn your attention to a copy of
16 a disbursement check from Stanislaus County to Turlock
17 Irrigation District, and then accompanying expenditure
18 voucher.

19 And for the Commission members, these are
20 Exhibit 3 to the claimant's May 12th comment letter.
21 They are also pages 285 and 286 of the PDF packet for
22 the Commission's exhibits.

23 Mr. Kirschner, do you have those? It's a check
24 and then a spreadsheet.

25 A Yes, I do.

1 Q Okay. Is the first page of that a copy of a
2 check that the district received from Stanislaus County?

3 A Yes.

4 Q And then is the second page -- did the second
5 page, which is kind of a spreadsheet format, did that
6 accompany that check?

7 A Yes.

8 Q Okay. So I want to turn your attention to the
9 second page, which is the spreadsheet. And please just
10 read, briefly, the line items that reflect credits to
11 the district, what the descriptions are. Not the
12 money -- not the money amounts, but just the
13 descriptions.

14 A Okay. Current secured taxes, current unsecured
15 taxes, delinquent unsecured taxes.

16 Should I go on?

17 Q Let me interrupt you briefly.

18 Just read the lines that have credits to the
19 district in them, not the ones that are zero.

20 A Right. Okay.

21 The next line item is unitary; SB 813
22 supplemental taxes; FHA in lieu of taxes; and then we
23 have a negative amount for the property tax
24 administration fee.

25 Q And so just to clarify, that last item you read

1 shows a deduction from -- does the last item you read
2 show a deduction from the total amount to be paid to the
3 district to reflect a charge to the district for the
4 county's property tax administration?

5 A Correct. Correct.

6 Q Okay.

7 A That's my understanding, yes.

8 Q And so based on your position as the department
9 manager, any communications you have had with Stanislaus
10 County, and your experience as a CPA, where this
11 document describes, this remits it to the district as
12 taxes, is it your understanding that this is all taxes?

13 A Yes. Yes. Any kind of correspondence always
14 comes from the property tax administration for the
15 County.

16 Q Okay. And then just to close the loop on this,
17 are any of the funds that you received from the County
18 on this expenditure voucher for services that the
19 district provides to its customers?

20 A Not that I'm aware of, no.

21 Q Okay. Thank you.

22 Let me see if I have any remaining questions
23 about that. I don't.

24 The next thing I want to ask you about is the
25 district's budget. The proposed decision claims that

1 the district's budget does not reflect these receipts
2 from the County as taxes.

3 Is there someplace in the district's budget
4 that reflects the receipt of these tax revenues from the
5 County?

6 A Yes. It's included in our water revenue line
7 item within our budget.

8 Q Okay. So are there other items in that -- in
9 that line item?

10 A There are.

11 Q Okay. So that line item wouldn't match the tax
12 revenue, but it includes it.

13 A That's correct.

14 Q Okay. Thank you.

15 And final question: Does the district report
16 this property tax revenue to the State Controller?

17 A We do, as part of our -- I forget the name of
18 it. Our financial transaction report I believe is what
19 it's called. So we do that annually. It's just one
20 line item within that report though.

21 Q Okay. Thank you.

22 MR. FRANCOIS: That's all the questions I have for
23 Mr. Kirschner.

24 MR. PROWS: Thank you, Mr. Kirschner.

25 I will just conclude our presentation by saying

1 that if the Commission can come up with a way for the
2 districts to fund this mandate without fees or charges
3 or assessments that wouldn't be taxes, as defined by
4 Propositions 218 and 26, we're all ears. But we haven't
5 heard a way.

6 To dismiss this test claim, certainly you would
7 need to come up with a way for us to do so, but you
8 can't, because the mandate is not for the benefit of the
9 districts' ratepayers, but for the express benefits of
10 other parts of the state. Paying for that would require
11 a tax.

12 TID at least -- Turlock Irrigation District -- also
13 receives other property taxes, as you have just heard.
14 This test claim shouldn't be dismissed. It should
15 proceed to the merits without further delay.

16 And that's the conclusion of our presentation.
17 Thank you.

18 VICE CHAIRPERSON WALKER: Thank you.

19 Is there any public comment on this item?

20 (No response.)

21 VICE CHAIRPERSON WALKER: Are there any questions
22 from members?

23 (No response.)

24 VICE CHAIRPERSON WALKER: Is there a motion?

25 (No response.)

1 VICE CHAIRPERSON WALKER: Okay. I move to adopt
2 staff's recommendation.

3 Is there a second?

4 MEMBER NASH: I will second that.

5 VICE CHAIRPERSON WALKER: Thank you, Ms. Nash.

6 It has been moved by -- there has been a motion to
7 adopt staff's recommendation. It has been moved by
8 Member Walker; and seconded by Member Nash.

9 Are you ready for the question, or is there further
10 discussion?

11 (No response.)

12 VICE CHAIRPERSON WALKER: Heather, please call the
13 roll.

14 MS. HALSEY: Mr. Adams.

15 MEMBER ADAMS: Aye.

16 MS. HALSEY: Ms. Lee.

17 MEMBER LEE: Aye.

18 MS. HALSEY: Ms. Nash.

19 MEMBER NASH: Aye.

20 MS. HALSEY: Ms. Olsen.

21 MEMBER OLSEN: Aye.

22 MS. HALSEY: Mr. Silva.

23 MEMBER SILVA: Aye.

24 MS. HALSEY: Mr. Walker.

25 VICE CHAIRPERSON WALKER: Aye.

1 MS. HALSEY: Thank you.

2 VICE CHAIRPERSON WALKER: Motion carried.

3 Thank you, gentlemen.

4 MR. PROWS: Thank you.

5 MR. FRANCOIS: Thank you.

6 MR. KIRSCHNER: Thank you.

7 MS. HALSEY: We will now ask presenters for Item 3
8 to please turn off their video and mute their
9 microphones.

10 And next is Item 4. Senior Commission Counsel
11 Elizabeth McGinnis will please turn on her video and
12 unmute her microphone and present a proposed decision on
13 an incorrect reduction claim on municipal stormwater and
14 urban runoff discharges.

15 The claimant representative contacted us and said
16 to thank the Commission staff for their work on this
17 matter and that they are resting on their written
18 comments.

19 At this time, we invite the parties and witnesses
20 for Item 4 to please turn on their video and unmute
21 their microphone.

22 MS. MCGINNIS: Hi. Good morning.

23 This incorrect reduction claim alleges that the
24 State Controller's Office incorrectly reduced
25 reimbursement claims filed by the City of Lakewood for

1 costs arising from the Municipal Stormwater and Urban
2 Runoff Discharges Program.

3 Staff finds that the Controller's reduction of
4 costs claim for twice weekly trash collection based on
5 the claimant's failure to provide contemporaneous source
6 documents is incorrect as a matter of law. The
7 parameters and guidelines do not require contemporaneous
8 source documentation for ongoing maintenance activities,
9 including trash collection, under the reasonable
10 reimbursement methodology.

11 Rather, the claimant was required to retain
12 documentation showing the number of trash receptacles in
13 the jurisdiction and the number of trash collections.

14 Nonetheless, the documents provided by the claimant
15 contain inconsistencies and do not verify that trash
16 collection was performed twice a week during the audit
17 period.

18 Staff therefore recommends that the Commission
19 remand the claims back to the Controller for further
20 review and verification.

21 Staff also finds that the Controller's reduction,
22 based on its determination that Proposition A, Local
23 Return Funds, are offsetting revenues that should have
24 been identified and deducted from the reimbursement
25 claims, is correct as a matter of law.

1 Thus, staff recommends that the Commission adopt
2 the proposed decision and partially approve this IRC.

3 Thank you.

4 VICE CHAIRPERSON WALKER: Thank you, Ms. McGinnis.

5 Parties and witnesses, please state your names for
6 the record.

7 MS. KUROKAWA: Lisa Kurokawa.

8 VICE CHAIRPERSON WALKER: Ms. Kurokawa, for the
9 State Controller's office, do you have any questions?
10 Any comments? I'm sorry.

11 MS. KUROKAWA: Yeah. I just want to say that we
12 agree with the Commission's proposed decision, and we
13 will work with the City of Lakewood to reinstate the
14 costs that you guys have deemed to be eligible for the
15 twice weekly pick-ups.

16 VICE CHAIRPERSON WALKER: Thank you.

17 Is there any public comment on this item?

18 (No response.)

19 VICE CHAIRPERSON WALKER: Are there any questions
20 from members?

21 MEMBER OLSEN: Mr. Chair, I move adoption of the
22 staff recommendation.

23 VICE CHAIRPERSON WALKER: Thank you, Ms. Olsen.

24 Is there a second?

25 MEMBER ADAMS: I would -- I would make a second,

1 Mr. Chairman.

2 VICE CHAIRPERSON WALKER: Thank you, Mr. Adams.

3 There has been a motion to adopt staff's
4 recommendation, and it has been moved by Member Olsen;
5 and seconded by Member Adams.

6 Are you ready for the question, or is there a
7 further discussion?

8 (No response.)

9 VICE CHAIRPERSON WALKER: Heather, please call the
10 roll.

11 MS. HALSEY: Mr. Adams.

12 MEMBER ADAMS: Aye.

13 MS. HALSEY: Ms. Lee.

14 MEMBER LEE: Aye.

15 MS. HALSEY: Ms. Nash.

16 MEMBER NASH: Aye.

17 MS. HALSEY: Ms. Olsen.

18 MEMBER OLSEN: Aye.

19 MS. HALSEY: Mr. Silva.

20 MEMBER SILVA: Aye.

21 MS. HALSEY: Mr. Walker.

22 VICE CHAIRPERSON WALKER: Aye.

23 Motion carried.

24 MS. HALSEY: Thank you.

25 Will the parties and witnesses for Item 4 please

1 turn off your videos and mute your microphones.

2 Item 5 is reserved for county applications for a
3 finding of significant financial distress, or SB 1033
4 applications. No SB 1033 applications have been filed.

5 Item 6 and 7 were on consent.

6 And Program Analyst Jill Magee will please turn on
7 her video and microphone and present Item 8, a
8 legislative update.

9 MS. MAGEE: Good morning.

10 The following are the legislative updates since the
11 last time the Commission met:

12 First, SB 189, State government. This budget
13 trailer bill signed by Governor Newsom on June 30th,
14 2022, amends the Bagley-Keene Open Meeting Act to extend
15 the authority to conduct public meetings remotely
16 through July 1st, 2023.

17 As relevant to the Commission, this bill authorizes
18 a state body to hold public meetings through
19 teleconferencing and to make public meetings accessible
20 electronically to all members of the public seeking to
21 observe and to address the state body.

22 It also suspends, and no longer requires, the
23 following: The physical presence of members as a
24 condition of participation in or forum for a public
25 meeting; the identification of each teleconference

1 location from which a member will be participating; the
2 posting of the notice and agenda at each teleconference
3 location; and the ability of the public to address the
4 state body at each teleconference location.

5 Next, AB 1610, State mandates: claims, proposed to
6 reduce the minimum amount of costs incurred to file a
7 mandate reimbursement claim. However, it did not make
8 it out of its house of origin before the deadline to do
9 so for this session. Therefore, this bill is dead.

10 Next, AB 1733, State bodies: open meetings. As was
11 detailed in the legislative update for today's agenda,
12 this bill would have made changes to the Bagley-Keene
13 Open Meeting Act. However, it did not make it out of
14 its house of origin before the deadline to do so for
15 this session. Therefore, this bill is dead.

16 Next, AB 1795, Open meetings: remote participation.
17 This bill would have addressed provisions for both
18 in-person and remote meetings. However, it did not make
19 it out of its house of origin before the deadline.
20 Therefore, this bill is also dead.

21 Finally, AB 2066, Communication: telegraph
22 corporations, telegraphy, and telegrams. This bill
23 would have amended provisions under Bagley-Keene by
24 removing the telegram as a means to waive notice.
25 However, it too did not make it out of its house of

1 origin and is also dead.

2 Staff will continue to monitor legislation for
3 bills that impact the mandates process.

4 Thank you.

5 VICE CHAIRPERSON WALKER: Thank you. Thank you for
6 that report, Ms. Magee.

7 MS. HALSEY: Chief Legal Counsel Camille Shelton
8 will please turn on her video and microphone and present
9 Item 9, the Chief Legal Counsel Report.

10 MS. SHELTON: Good morning, everyone.

11 Since our last hearing, we don't have any new
12 filings and no recent decisions.

13 On June 8th, the California Supreme Court did
14 conduct oral argument in Coast Community College
15 District, and we are still waiting for that decision to
16 come.

17 And I don't have anything further.

18 MS. HALSEY: Item 10 is the Executive Director
19 Report.

20 As I'm sure you are all aware, the State adopted a
21 timely budget, and the Commission -- but you might not
22 know that the Commission's budget was approved as
23 proposed, with the addition of appropriation to fund the
24 vote by mail ballots, prepaid postage mandate, at the
25 high end of the range of the statewide cost estimate;

1 that was adopted by the Commission at its March 25th,
2 2022, meeting.

3 The Commission's budget also includes three new
4 administrative positions: An Information Technology
5 Specialist I, an AGPA HR; and an AGPA Procurement; and
6 also included a reclassification of our current
7 Information Technology Specialist I to an Information
8 Technology Specialist II. The Commission management is
9 currently recruiting for and reclassifying these
10 critical positions.

11 In addition, the Commission's budget analyst, Katie
12 Lovell, has taken a position with the Department of
13 Healthcare Access and Information. And her last day
14 with the Commission will be August 5th. So we will also
15 be recruiting for that position.

16 For workload, after this hearing, there are 39
17 pending test claims, 37 of which are regarding
18 stormwater. There is also one amendment to parameters
19 and guidelines and two statewide cost estimates pending.

20 On inactive status, pending the outcome of
21 litigation, there is one parameters and guidelines
22 regarding stormwater.

23 And, finally, we have two remaining IRCs pending.

24 Commission staff expects to complete all of the
25 currently pending test claims and IRCs by approximately

1 the September 26, 2025, meeting, depending on staffing
2 and other workload. However, some of the pending
3 matters maybe be heard and decided earlier than
4 currently indicated if they are consolidated for
5 hearing.

6 And that's all I have.

7 VICE CHAIRPERSON WALKER: Thank you, Ms. Halsey.

8 Okay. We'll meet in closed session, closed
9 executive session, pursuant to Government Code section
10 11126(e), to confer with and receive advice from legal
11 counsel for consideration and action, as necessary and
12 appropriate, upon the pending litigation listed on the
13 published notice and agenda; and to confer with and
14 receive advice from legal counsel regarding potential
15 litigation.

16 The Commission will also confer on personnel
17 matters pursuant to Government Code section 11126(a)(1).
18 We will reconvene in open session in approximately 15
19 minutes.

20 Okay. You can go ahead and log out here and log on
21 using your closed session link.

22 (Closed session was held from
23 10:55 a.m. to 11:09 a.m.)

24 VICE CHAIRPERSON WALKER: The Commission met in
25 closed executive session pursuant to Government Code

1 section 11126(e) to confer with and receive advice from
2 legal counsel for consideration and action as necessary
3 and appropriate upon the pending -- upon pending
4 litigation listed on the published notice and agenda;
5 and to confer with and receive advice from legal counsel
6 regarding potential litigation.

7 The Commission also conferred on personnel matters
8 pursuant to Government Code section 11126(a)(1).

9 With no further business to discuss, I will
10 entertain a motion to adjourn.

11 MEMBER NASH: So moved.

12 MEMBER OLSEN: Second.

13 VICE CHAIRPERSON WALKER: Thank you, Ms. Nash and
14 Ms. Olsen.

15 There's been a motion to adjourn. It has been
16 moved by Member Nash and seconded by Member Olsen to
17 adjourn this meeting.

18 Heather, please call the roll.

19 MS. HALSEY: Mr. Adams.

20 MEMBER ADAMS: Aye.

21 MS. HALSEY: Ms. Lee.

22 MEMBER LEE: Aye.

23 MS. HALSEY: Ms. Nash.

24 MEMBER NASH: Aye.

25 MS. HALSEY: Ms. Olsen.

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MEMBER OLSEN: Aye.

MS. HALSEY: Mr. Silva is absent.
Mr. Walker.

VICE CHAIRPERSON WALKER: Aye.

The motion carried. This meeting is adjourned.

Everyone have a wonderful weekend. I will see you next
time.

(Proceedings concluded at 11:11 a.m.)

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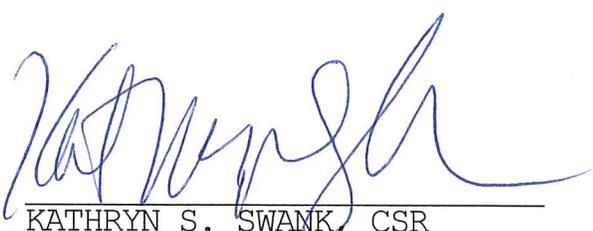
CERTIFICATE OF REPORTER

I, KATHRYN S. SWANK, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing proceedings, heard via Zoom, were reported in shorthand by me, Kathryn S. Swank, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings nor in any way interested in the outcome of said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of August 2022.



KATHRYN S. SWANK, CSR
Certified Shorthand Reporter
License No. 13061